

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DAVID LYONS,

Plaintiff,

Case Number: 2:13-CV-10503

v.

HONORABLE PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

STEVEN R. FOX, et al.,

Defendants.

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**OPINION AND ORDER DENYING LEAVE TO PROCEED *IN FORMA***  
**PAUPERIS AND DISMISSING COMPLAINT WITHOUT PREJUDICE**

Michigan state prisoner David Lyons has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. The complaint alleges that defendants, while acting under color of state law, conspired to convict him of a crime he did not commit. Lyons seeks monetary relief. He has requested that he be permitted to proceed *in forma pauperis* in this case. See 28 U.S.C. § 1915(a)(1) (1996). The Court denies leave to proceed *in forma pauperis* and dismisses the complaint pursuant to 28 U.S.C. § 1915(g).

Indigent prisoners may seek to bring a civil action without prepayment of the fees and costs for the action. 28 U.S.C. § 1915(a)(2). A prisoner, however, may be barred from proceeding *in forma pauperis* in a civil action if, on three or more previous occasions, a federal court has dismissed the prisoner's action because it was frivolous or malicious or failed to state a claim for which relief may be granted. 28 U.S.C. § 1915(g) (1996); *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (holding that "the proper

procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed *in forma pauperis* pursuant to the provisions of § 1915(g)” because the prisoner “must pay the filing fee at the time he initiates the suit”).

Lyons has filed at least three prior civil rights complaints which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. *See Lyons v. Wickersham, et al.*, No. 2:12-cv-14353 (E.D. Mich. Dec. 18, 2012); *Lyons-Bey v. Bouchard, et al.*, No. 2:04-cv-210 (W.D. Mich. Oct. 5, 2004); *Lyons-Bey v. Palmer, et al.*, No. 2:02-cv-185 (W.D. Mich. Dec. 10, 2002). A plaintiff may maintain a civil action despite having had three or more civil actions dismissed as frivolous if the prisoner is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). “[T]his exception applies only if the complaint alleges facts showing that a danger of serious physical injury exists at the time the complaint is filed.” *Percival v. Gerth*, 443 F. App’x 944, 946 (6th Cir. 2011). Lyons’ claim that defendants conspired to wrongfully convict him does not fall within the “imminent danger” exception of § 1915(g).

Accordingly, the Court **DENIES** Plaintiff’s application for leave to proceed *in forma pauperis* and **DISMISSES** the complaint pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to Plaintiff filing a new complaint with payment of the filing fee.

**SO ORDERED.**



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PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: 3-25-13